

Surface Transportation Board, DOT

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AUTHORITY: 5 U.S.C. 571 *et seq.* 53, 559, and 582.

SOURCE: 57 FR 32451, July 22, 1992, unless otherwise noted.

§ 1109.1 Invoking ADR in Board proceedings.

Any proceeding may be held in abeyance for 90 days while administrative dispute resolution (ADR) procedures (such as arbitration and mediation) are pursued. (Additional 90 day periods can be requested.) The period while any proceeding is held in abeyance to facilitate ADR will not be counted towards the statutory deadlines. All parties are required to indicate their written consent for ADR treatment. Requests that a proceeding be held in abeyance while ADR procedures are pursued should be submitted to the Office of the Secretary. The Secretary shall promptly issue an order in response to such requests. Unless arbitration or some other binding process involving a neutral has been undertaken, any party believing that ADR procedures are not yielding the intended results shall inform the Secretary and all parties in writing, and normal agency procedures will be reactivated by the Secretary by notice served on all the parties.

§ 1109.2 Appeals from arbitration decisions.

Appeals are limited to clear errors of general transportation importance, and not issues of causation or fact. Arbitration awards can be challenged on the basis that they do not take their essence from the Interstate Commerce Act, or are not limited to the matters the parties have referred for arbitration. Appeals are limited to 10 type-written pages. Parties will have 20 days from the service date of the decision to file, and opposing parties 20 days to answer. Arbitration decisions will become effective in 30 days unless a party seeks a stay of the decision within 10 days of its issuance, and we grant the stay. Appeals and stay petitions should be limited to extraordinary circumstances.

[57 FR 32451, July 22, 1992; 57 FR 35628, Aug. 10, 1992]

§ 1109.3 Confidentiality in ADR matters.

In all ADR matters involving the Board, whether under the Administrative Dispute Resolution Act or not, the confidentiality provisions of ADRA (5 U.S.C. 584) shall bind the Board and all parties and neutrals in those ADR matters.

PART 1110—PROCEDURES GOVERNING INFORMAL RULEMAKING PROCEEDINGS

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AUTHORITY: 49 U.S.C. 721.

SOURCE: 47 FR 49556, Nov. 1, 1982, unless otherwise noted.

§ 1110.1 Applicability.

This part contains general rule-making procedures that apply to the issuance, amendment, and repeal of rules, general policy statement, or other interpretation of rules or law of the Surface Transportation Board, adopted under the procedures of section 553 of title 5 of the United States Code (the Administrative Procedure Act).

§ 1110.2 Opening of proceeding.

(a) The Board may open a rule-making proceeding on its own motion. In doing so, it may consider the recommendations of other agencies of the United States and of other persons.

(b) Any person may petition the Board to issue, amend, or repeal a rule.

(c) Each petition seeking the institution of a proceeding, filed under this section must:

(1) Be submitted, along with 15 copies if possible, to the Secretary, Surface Transportation Board, Washington, DC 20423;

(2) Set forth the text or substance of the rule or amendment proposed or

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specify the rule that the petitioner wants to have repealed or modified;

(3) Explain the interest of the petitioner in the action requested; and

(4) Contain any information and arguments available to the petitioner to support the action sought and may detail any environmental, energy, or small business considerations.

(d) In rail cases, the Board will grant or deny a petition within 120 days of its receipt.

(e) If the Board determines that a petition contains adequate justification, it will open a rulemaking proceeding pursuant to § 1110.3 and will notify the petitioner of its action.

(f) If the Board determines that the petition does not contain adequate justification for opening a rulemaking proceeding, the petition will be denied, with a brief statement of the grounds for denial, and the petitioner will be notified of the Board's action.

(g) If a petition under this section concerning a common carrier by railroad is granted, the Board will proceed as soon as it is practicable. If the petition is denied, the Board will publish a statement of the reasons for the denial in the FEDERAL REGISTER.

§ 1110.3 Publication of notices.

(a) Interpretive rules, general statements of policy, and rules relating to organization, procedure, or practice may be issued as final without notice or other public rulemaking proceedings.

(b) General rulemaking proceedings will be opened by the issuance of either a notice of intent to institute a rulemaking proceeding, an advance notice of proposed rulemaking, or a notice of proposed rules. The Board will publish the notice in the FEDERAL REGISTER, and it will invite the public to participate in the rulemaking proceeding. No notice will be issued when the Board finds for good cause, that notice is impractical or unnecessary or contrary to the public interest.

(c) Notices of proposed rulemakings will include:

(1) The proposed rules, if prepared;

(2) A discussion of why the rulemakings are needed and what they are intended to accomplish;

(3) Identification of significant dates in the proceedings, such as dates by which comments must be filed or on which the rules are proposed to take effect;

(4) Any relevant addresses;

(5) The name and phone number of an individual within the Board who can provide further information concerning the proceedings;

(6) Any supplementary information required; and

(7) Reference to the legal authority under which the rules are proposed.

(d) In addition to being published in the FEDERAL REGISTER, notices of proposed rulemaking and subsequent notices and decisions in rulemaking proceedings, will be served on the parties and made available to the public through the Office of the Secretary. To the extent possible, the date of service will be the same as the date of publication in the FEDERAL REGISTER. When the service and publication dates are not the same, the date of publication in the FEDERAL REGISTER is controlling for the purpose of determining time periods set by these procedures or by notices issued in individual proceedings.

§ 1110.4 Participation.

Any person may participate in rulemaking proceedings by submitting written information or views. In addition, the Board may invite persons to present oral arguments, participate in informal conferences, appear at informal fact-finding hearings, or participate in any other proceedings. Information contained in written submissions will be given the same consideration.

§ 1110.5 Consideration of comments received.

All timely comments will be considered before final action is taken on a rulemaking proposal. Comments which are filed late will be considered so far as possible without incurring additional expense, delay, or prejudice to other parties.

§ 1110.6 Petitions for extension of time to comment.

(a) Any person may petition the Board for an extension of time to submit comments in response to a notice of proposed rulemaking. The petition

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and one copy must be submitted at least 10 days prior to the deadline for filing comments. The filing of the petition does not automatically extend the time for the filing of petitioner's comments.

(b) The Board will grant the petition only if the petitioner shows a substantive interest in the proposed rule and good cause for the extension, and if the extension is in the public interest. If an extension is granted, notice of it will be published in the FEDERAL REGISTER, and it will apply to all persons.

§ 1110.7 Availability of dockets.

Dockets of pending rulemaking proceedings are maintained in the Office of the Secretary. These dockets are available for inspection by any person, and copies may be obtained upon payment of the prescribed fee.

§ 1110.8 Adoption of final rules.

If, after consideration of all comments received, final rules are adopted, notice will be published in the FEDERAL REGISTER.

§ 1110.9 Petition for waiver.

Any person may petition the Board for a permanent or temporary waiver of any rule. Petitions should be filed with the Secretary, Surface Transportation Board, Washington, DC 20423, and should identify the rule involved and the arguments in favor of granting the waiver.

[48 FR 44827, Sept. 30, 1983]

§ 1110.10 Petitions for reconsideration.

Any person may file a petition for reconsideration of the Board's decision in a rulemaking proceeding. Petitions should be filed within 20 days of the date that the final decision is published in the FEDERAL REGISTER and should identify the interest of the petitioner, the specific action sought, and the arguments favoring that action.

PART 1111—COMPLAINT AND INVESTIGATION PROCEDURES

Sec.

1111.1 Content of formal complaints; joinder.

1111.2 Amended and supplemental complaints.

1111.3 Service.

1111.4 Answers and cross complaints.

1111.5 Motions to dismiss or to make more definite.

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1111.8 Procedural schedule in stand-alone cost cases.

1111.9 Procedural schedule to determine whether to use simplified procedures.

1111.10 Meeting to discuss procedural matters.

AUTHORITY: 49 U.S.C. 721, 10704, and 11701.

SOURCE: 61 FR 52711, Oct. 8, 1996, unless otherwise noted.

§ 1111.1 Content of formal complaints; joinder.

(a) *General.* A formal complaint must contain the correct, unabbreviated names and addresses of each complainant and defendant. It should set forth briefly and in plain language the facts upon which it is based. It should include specific reference to pertinent statutory provisions and Board regulations, and should advise the Board and the defendant fully in what respects these provisions or regulations have been violated. The complaint should contain a detailed statement of the relief requested. Relief in the alternative or of several different types may be demanded, but the issues raised in the formal complaint should not be broader than those to which complainant's evidence is to be directed at the hearing. In a complaint challenging the reasonableness of a rail rate, the complainant should indicate whether, in its view, the reasonableness of the rate should be examined using constrained market pricing or using the simplified standards adopted pursuant to 49 U.S.C. 10701(d)(3). If the complainant seeks to use the simplified standards, it should support this request by submitting, at a minimum, the following information:

(1) A general history of the traffic at issue, including how the traffic has moved in the past, how it currently moves, and how it can and will be moved in the future. This information should address not only the physical movement of the traffic, but the type and level of rates actually used. It should include all carriers (rail and